

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed Emergency**

**Rule making related to education savings accounts**

The State Board of Education hereby adopts new Chapter 20, “Students First Act—Education Savings Accounts,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 256.7 and 2023 Iowa Acts, House File 68.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2023 Iowa Acts, House File 68.

*Purpose and Summary*

This rule making adopts a new Chapter 20 containing the administrative rules for the education savings account provisions of the Students First Act. New rule 281—20.1(257) provides definitions for the program. New rule 281—20.2(257) sets eligibility requirements for participation. New rule 281—20.3(257) sets parameters for the application process. New rule 281—20.4(257) provides for administration and accountability for the program.

*Reason for Adoption of Rule Making Without  
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the State Board finds that notice and public participation are unnecessary or impractical because 2023 Iowa Acts, House File 68, division II, is effective upon enactment and authorizes emergency rule making.

*Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a) and (b), the State Board also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on May 4, 2023, because 2023 Iowa Acts, House File 68, division II, so provides and because this rule making confers a benefit to the public or some segment thereof by setting up a program that will benefit students and families wishing to exercise expanded school choice.

*Adoption of Rule Making*

This rule making was adopted by the State Board on May 4, 2023.

*Concurrent Publication of Notice of Intended Action*

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 7023C** to allow for public comment.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa, as described in the Fiscal Note for House File 68, available at [www.legis.iowa.gov/docs/publications/FN/1367577.pdf](http://www.legis.iowa.gov/docs/publications/FN/1367577.pdf).

### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making became effective on May 4, 2023.

The following rule-making action is adopted:

Adopt the following **new** 281—Chapter 20:

## CHAPTER 20 STUDENTS FIRST ACT—EDUCATION SAVINGS ACCOUNTS

### **281—20.1(257) Definitions.**

**20.1(1)** “Annual income” means the same as “net income” as defined in Iowa Code section 422.7 in effect for the year preceding an application. In calculating annual income, the department shall use information from the last year’s state tax form and need not include income of individuals who have no legal obligation to provide support to the student unless said individual is married to the parent or guardian who is responsible for financially supporting the student. If “annual income” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will cease to be applicable by operation of law on July 1, 2025.

**20.1(2)** “Department” means the department of education.

**20.1(3)** “Full-time” means enrollment at a nonpublic school with a minimum school calendar that meets the requirement of Iowa Code section 279.10 for at least 75 percent of the school’s definition of full-time.

**20.1(4)** “Household” means the number of people who reside together and who are related by birth, marriage, adoption, legal guardianship, or placement in the home through a state agency. “Household” includes parents, student applicants, and other children who share at least one parent by birth, by adoption, by a parent’s current marriage, or by placement in the home through a state agency. A parent on military duty is considered to be residing in the household. If “household” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will cease to be applicable by operation of law on July 1, 2025.

**20.1(5)** “Nonpublic school” means the same as defined in Iowa Code section 285.16.

**20.1(6)** “Qualified educational expenses” means the same as defined in Iowa Code section 257.11B(1) “b” as enacted by 2023 Iowa Acts, House File 68, section 7.

*a.* For purposes of this subrule, an approvable provider of “educational therapies” is qualified by recognized training and education to provide those educational therapies. To prevent waste, fraud, and abuse, “educational therapies” does not include therapies provided by the student’s family. For purposes

of this subrule, “family” includes parents, step-parents, guardians, siblings, half siblings, step-siblings, grandparents, step-grandparents, aunts, uncles, or first cousins.

*b.* For purposes of this subrule, approvable “online education programs” means online education programs provided by online education providers approved by the department under 281—Chapter 15.

*c.* For purposes of this subrule, an approvable provider of “vocational and life skills education” is any entity approved by the department or any other unit of state government to provide the vocational and life skills education sought.

*d.* For purposes of this subrule, an approvable “accredited provider” is any individual or organization holding a credential issued by the Iowa board of educational examiners or any other credential issued by the state of Iowa. For purposes of this paragraph, paraprofessionals or assistants are sufficiently trained if they hold a credential issued under Iowa Code section 272.12 or if they have received training and education deemed sufficient by their supervising professional.

*e.* For purposes of this subrule, expenses listed in Iowa Code section 257.11B(1) “*b*” as enacted by 2023 Iowa Acts, House File 68, section 7, are not eligible for payment.

**20.1(7)** “Resident” means the same as defined in Iowa Code section 282.1(2).

**20.1(8)** “Student” is synonymous with the term “pupil” as that term is used in Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68, section 7.

**281—20.2(257) Eligible students.**

**20.2(1)** Resident students are eligible as described in Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, with annual income determined pursuant to subrule 20.1(1).

**20.2(2)** Resident students are deemed to attend a nonpublic school for that school budget year under Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, if the student attends a nonpublic school on a full-time basis.

**20.2(3)** Resident students are deemed enrolled in a nonpublic school for the school year immediately preceding the school year for which the education savings account (ESA) payment is requested under Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, if they enrolled in and attended a nonpublic school at any point in the immediately preceding school year.

**281—20.3(257) Application process.** The parent or guardian of an eligible student may request an ESA payment during the time period specified by Iowa Code section 257.11B(3) as enacted by 2023 Iowa Acts, House File 68, section 7, by applying to the department, in a manner prescribed by the department. Within the time frame provided by Iowa Code section 257.11B(5) as enacted by 2023 Iowa Acts, House File 68, section 7, the department provides a response to the application.

**281—20.4(257) Administration, accountability, monitoring, and enforcement.**

**20.4(1)** The department will take reasonable efforts to verify eligibility of parents, students, nonpublic schools, and providers to participate in this chapter, including verifying information with other state agencies.

**20.4(2)** The department will make an equal distribution of funds under this chapter to a third-party entity, for distribution to eligible students’ accounts, after confirming enrollment at the start of the academic year and enrollment and attendance at the midpoint of the academic year.

**20.4(3)** The department’s actions under Iowa Code section 257.11B(5) “*e*” and “*f*” as enacted by 2023 Iowa Acts, House File 68, section 7, may be any action consistent with the department’s authority under Iowa Code section 256.1.

**20.4(4)** The department must recover all improperly paid ESA funds. The department and its director have flexibility to engage in voluntary collection activities if overpayments were based on a good faith error. For purposes of this chapter, a “false claim” is a statement made in conjunction with this program that is knowingly false or in reckless disregard of the truth.

**20.4(5)** A parent or guardian may appeal to the state board of education any administrative decision the department or third-party entity makes pursuant to this chapter, including determinations of eligibility, allowable expenses, and removal from the program. An appeal under this subrule must

be signed and in writing. Electronic submissions and signatures are allowed. Any appeals under this subrule are timely if filed within 30 days of the date of the administrative decision and are governed by 281—Chapter 6.

These rules are intended to implement Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/31/23.